

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEMETRIUS L. HARVEY,

No. C07-01681 MJJ

Plaintiff,

**ORDER STRIKING DEFENDANT'S
MOTION TO DISMISS AND STRIKING
DEFENDANT'S MOTION FOR MORE
DEFINITE STATEMENT**

v.

CITY OF OAKLAND,

Defendant.

INTRODUCTION

Before the Court is Defendant City of Oakland's ("Defendant's" or "City's") Motion to Dismiss and Motion for More Definite Statement.¹ *Pro se* Plaintiff Demetrius Harvey ("Plaintiff") failed to file a timely opposition. For the following reasons, the Court **STRIKES** Defendant's Motion to Dismiss and **STRIKES** Defendant's Motion For More Definite Statement as moot.

PROCEDURAL BACKGROUND

On March 23, 2007, Plaintiff filed a complaint against Defendant City and several individual officers arising from a traffic stop and Plaintiff's subsequent arrest and detention. In his first cause of action², Plaintiff sought relief under 42 U.S.C. § 1983 for violations of his Fourth and Fourteenth Amendment Rights. In his second, third, and fourth causes of action, Plaintiff made tort claims for

¹ Docket No. 16.

² Though Plaintiff lists the separate claims for relief in his complaint as "Counts," the Court will refer to them as causes of action for the purposes of this motion.

false arrest, negligence, and negligent infliction of emotional distress. Finally, in his fifth and sixth causes of action, Plaintiff asserted claims under Article 1 §§ 7(A) and 13 of the California Constitution.


On June 6, 2007, Defendant moved to dismiss, under Federal Rule of Civil Procedure 12(b)(6), each of Plaintiff's claims on separate grounds and, in the alternative, moved for a more definite statement under Rule 12(e). On June 22, 2007, after Plaintiff failed to timely respond to Defendant's motion, this Court issued an order to show cause³ requiring Plaintiff: 1) to show good cause in writing why he failed to respond; and 2) to file an opposition or statement of non-opposition to Defendant's motion. On June 29, 2007, the Court received a letter⁴ from Plaintiff stating that he was currently incarcerated and requesting forty five days to amend his complaint. That same day, this Court issued another order⁵ finding the extension period requested unwarranted, yet allowed Plaintiff to file an opposition, statement of non-opposition, or amended complaint by July 13, 2007. On July 12, 2007, Plaintiff served Defendant with an Amended Complaint.

CONCLUSION

Defendant's motion addresses the allegations in the original Complaint. Defendants have not had an opportunity to address the allegations in the Amended Complaint, which is currently the operative complaint before the Court. Accordingly, the Court **STRIKES** Defendant's Motion to Dismiss and **STRIKES** Defendant's Motion For More Definite Statement as moot. The Court **GRANTS** Defendant leave to file renewed a motion. Any renewed motions shall be filed within 20 days of the filing of this order.

IT IS SO ORDERED.

Dated: August_4_, 2007


MARTIN J. JENKINS
UNITED STATES DISTRICT JUDGE

³ Docket No. 17.

⁴ Docket No. 18.

⁵ Docket No. 19.

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DEMETRIUS L. HARVEY,
Plaintiff,

v.

CITY OF OAKLAND et al,
Defendant.

Case Number: CV07-01681 MJJ

**CERTIFICATE OF SERVICE
ON NON E-FILING PARTY**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 6, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Demetrius Harvey
360 So Helm Avenue
Fresno, CA 93727



Dated: August 6, 2007

Richard W. Wieking, Clerk
By: Edward Butler, Deputy Clerk